

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MICHAEL C. SHEALY,

Plaintiff,

v.

24-CV-1172-LJV
ORDER

NIAGARA FRONTIER
TRANSPORTATION AUTHORITY, et al.,

Defendants.

The pro se plaintiff, Michael C. Shealy, has asked this Court to order the United States Marshals Service (“Marshals”) to effect service on the named defendants under Rule 4(c)(3) of the Federal Rules of Civil Procedure. See Docket Item 3. The Court grants that motion.

Shealy also has asked this Court to appoint counsel for him. Docket Item 2. In deciding whether to appoint counsel, courts first assess the plaintiff’s likelihood of success on the merits of the claim. See *Hodge v. Police Officers*, 802 F.2d 58, 61 (2d Cir. 1986). If the claim meets this threshold requirement, courts consider a number of other factors, including “the nature of the factual issues the claim presents[,] . . . the plaintiff’s apparent ability to present the case[,] . . . whether appointment of counsel would lead to a quicker and more just result by sharpening the issues and shaping the examination[,] . . . [and the plaintiff’s] efforts to obtain counsel.” *Id.*

This action was commenced only recently, and the defendants have not yet appeared, let alone answered the allegations in the complaint. The only facts upon which the Court may base its decision as to Shealy’s likelihood of success are the

allegations in his complaint. Therefore, at this stage, this Court lacks sufficient information to consider the factors stated in *Hodge*, and Shealy's motion for the appointment of counsel is denied without prejudice as premature.

ORDER

In light of the above, IT IS HEREBY

ORDERED that Shealy's motion for the appointment of counsel, Docket Item 2, is denied without prejudice; and it is further

ORDERED that Shealy's motion for service by the Marshals, Docket Item 3, is granted; and it is further

ORDERED that the Clerk of the Court shall send to Shealy one Marshals Process Receipt and Return form ("USM-285 form") for each named defendant; and it is further

ORDERED that upon receipt of the USM-285 forms, Shealy shall (1) pay the service fee of **\$8.00 per summons and complaint** to the Marshals by money order or certified check and (2) provide the Marshals with all necessary papers for service, including (i) a copy of this order, (ii) a copy of the complaint, (iii) one completed USM-285 form for each named defendant, and (iv) one summons issued by the Clerk of the Court for each named defendant; and it is further

ORDERED that upon receipt of the service fees and papers, the Marshals shall effect service of the summons and complaint upon the named defendants. Shealy is advised that he **must effect service within 90 days of the date of this order**. It is Shealy's responsibility to inquire of the Marshals at 716-348-5300 as to whether service has been made and, if necessary, to request an extension of time for service. See

Meilleur v. Strong, 682 F.3d 56, 63 (2d Cir. 2012). If, within 90 days of this order, Shealy has not made service or requested an extension of time in which to do so, the Court may dismiss this action for failure to prosecute under Rules 4(m) and 41(b) of the Federal Rules of Civil Procedure;¹ and it is further

ORDERED that Shealy shall notify the Court in writing if his address changes.

The Court may dismiss the action if Shealy fails to do so.

SO ORDERED.

Dated: January 29, 2025
Buffalo, New York

/s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

¹ The plaintiff is advised that he may be eligible for help in effecting service and other matters from the Pro Se Assistance Program, a joint project staffed by the University at Buffalo School of Law and the Erie County Bar Association Volunteer Lawyers Project. The program can be reached by calling 716-847-0662, ext. 340, and leaving a message. Additional information is available at <https://www.nywd.uscourts.gov/pro-se-assistance-program-0>.